

Approved:

Lee Renzin
LEE RENZIN
Assistant United States Attorney

Before: THE HONORABLE GEORGE A. YANTHIS
United States Magistrate Judge
Southern District of New York

11 MAG. 2963

----- X

UNITED STATES OF AMERICA

- v. -

ARISTIDE ESSER,
Defendant.

SEALED COMPLAINT

Violation of 21 U.S.C. §§ 812,
841(a), 841(b)(1)(C);
18 U.S.C. § 2.

COUNTY OF OFFENSE:
ROCKLAND

----- X

BRIAN O'ROURKE, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE

1. On or about August 31, 2011, in the Southern District of New York and elsewhere, ARISTIDE ESSER, the defendant, intentionally and knowingly distributed and dispensed controlled substances, to wit, ESSER, a medical physician, prescribed secobarbital, a Schedule II controlled substance that is commonly sold in a form known as "Seconal," outside the scope of professional medical practice and not for a legitimate medical purpose.

(Title 21, United States Code, Sections 812, 841(a), 841(b)(1)(C); Title 18, United States Code, Section 2.)

COUNT TWO

2. On or about September 14, 2011, in the Southern District of New York and elsewhere, ARISTIDE ESSER, the defendant, intentionally and knowingly distributed and dispensed controlled substances, to wit, ESSER, a medical physician, prescribed secobarbital, a Schedule II controlled substance that

is commonly sold in a form known as "Seconal," outside the scope of professional medical practice and not for a legitimate medical purpose.

(Title 21; United States Code, Sections 812, 841(a), 841(b)(1)(C); Title 18, United States Code, Section 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

3. I am a Special Agent with the FBI assigned to the Westchester Violent Crimes Task Force (the "Task Force"). I have been employed by the FBI for approximately fourteen years. Prior to being employed by the FBI, I served as an Assistant District Attorney in the New York County District Attorney's Office. During the course of my career, I have conducted numerous investigations of unlawful drug distribution in violation of state and federal narcotics laws, and have conducted or participated in wire and physical surveillance, surveillance of undercover transactions, the introduction of undercover agents, the execution of search warrants, debriefings of informants, and reviews of taped conversations and drug records. Through my training, education, and experience, I have become familiar with the manner in which illegal drugs are produced, transported, stored, and distributed and with the methods of payment for such drugs. I have been involved in the investigation of the above-described offenses, and I am familiar with the facts and circumstances set forth below from my personal participation in the investigation, including my review of pertinent documents, and from my conversations with fellow law enforcement officers. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

4. Since in or about January 2011, the FBI, together with local law enforcement, has been conducting an investigation into the illegal trafficking of controlled substances, including but not limited to Schedule II prescription pills, in and around Rockland County, New York.

5. I have reviewed records maintained by New York State and have learned that ARISTIDE ESSER, the defendant, is a physician licensed to practice medicine by New York State; is board-certified in psychiatry and neurology; and maintains a medical practice in New City, New York.

6. I have spoken with a cooperating witness ("CW-1"),¹ who provided the following information, in substance and in part, regarding ARISTIDE ESSER, the defendant:

a. CW-1 had visited ESSER approximately three or four times as a patient prior to the time CW-1 began cooperating with law enforcement.

b. During CW-1's first appointment with ESSER, which lasted approximately twenty minutes, CW-1 was weighed and asked questions from a questionnaire related to depression. At no time did ESSER or any member of his staff (i) conduct any further physical examination other than weighing CW-1; (ii) conduct a psychiatric examination; or (iii) provide any counseling services.

c. ESSER charged CW-1 \$250 for the initial visit.

d. At no time did ESSER request to review CW-1's medical history records, including records of CW-1's prescription drug history.

e. ESSER typically began each visit with CW-1 by asking CW-1, in substance and in part, what prescriptions s/he needed.

f. ESSER ended each visit by providing CW-1 with prescriptions, at least some of which, according to CW-1, were not medically necessary.

7. At the direction of law enforcement agents, CW-1 met with ARISTIDE ESSER, the defendant, on three occasions while equipped with a recording device. As set forth in more detail below, during the first and second meetings, ESSER provided CW-1 with, among other things, a prescription for Seconal in the name of another person.² Based on my experience and investigation of this matter, including discussions with other law enforcement agents, I know that medical doctors are generally prohibited from

¹ CW-1 has been charged with one count of conspiring to distribute controlled substances, in violation of 21 U.S.C. § 846. Information provided by CW-1 in the past has been reliable and corroborated by other evidence.

² Based on my investigation of this matter, I know that the names provided by CW-1 were in fact aliases frequently used by CW-1.

prescribing controlled substances to individuals who are not their patients or to put a name on a prescription other than the name of intended user of the controlled substance.³

8. On or about August 31, 2011, CW-1 visited ARISTIDE ESSER, the defendant (the "August 31 Visit"). CW-1 was equipped with an audio recording device. Based on my review of the recording and a draft summary of the recording prepared by another law enforcement agent, I believe that the following, among other things, took place during the August 31 Visit:

a. ESSER stated that he only sees patients by appointment and then asked why CW-1 came in.

b. CW-1 told ESSER that s/he was in the area and stopped by because s/he needed replacements for his/her medicine.

c. ESSER asked for CW-1's name. A short time later, ESSER noted that CW-1's last visit was on July 28.

d. ESSER and CW-1 discussed the medications CW-1 was taking, including Wellbutrin, Dexedrine, and Xanax.⁴ ESSER then asked CW-1 the quantities of Dexedrine and Xanax that CW-1 wanted.

e. CW-1 asked ESSER, in substance and in part, if he could commit suicide with Xanax. ESSER replied, in substance and in part, that Xanax would not kill CW-1, rather, that it would just put CW-1 to sleep; that it is fairly safe; but

³ See, e.g., N.Y. Laws and Regulations on Controlled Substances, Part 80.63(c)(1) ("No controlled substance prescription shall be issued prior to the examination of the patient by the practitioner except as otherwise permitted by this subdivision."); 21 U.S.C. § 843(a)(3) (making it a federal crime "to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge").

⁴ I know Wellbutrin to be a brand name for bupropion, which is not a controlled substance and is indicated for, among other things, depression and smoking cessation. I know Dexedrine to be a brand name for dextroamphetamine, a Schedule II controlled substance that is indicated for, among other things, attention deficit hyperactivity disorder ("ADHD") and narcolepsy. I know Xanax to be a brand name for alprazolam, a Schedule IV controlled substance that is indicated for, among other things, panic disorder and anxiety disorders.

that CW-1's doctor should not give CW-1 more and more because it could harm CW-1's liver.

f. CW-1 asked if ESSER would provide a prescription for Seconal for CW-1's brother-in-law.⁵ CW-1 said, in substance and in part, that the brother-in-law had insurance but that CW-1 would be the one taking the Seconal.

g. ESSER asked CW-1 for the brother-in-law's name, age, and address, as well as the quantity of pills that CW-1 wanted. CW-1 provided a name ("ALIAS-1") and told ESSER, "ninety" and "one hundred milligrams."

9. Immediately after the August 31 Visit, CW-1 showed law enforcement agents prescriptions written by ARISTIDE ESSER, the defendant, for:

- a. "Dexedrine 10mg #210" in CW-1's name;
- b. "Wellbutrin x2 300mg #30" in CW-1's name;
- c. "Xanax 2mg #180" in CW-1's name; and
- d. "Seconal 100mg #90" in ALIAS-1's name.

10. On or about September 20, 2011, CW-1 visited ARISTIDE ESSER, the defendant, for an appointment (the "September 20 Visit"). CW-1 was equipped with an audio/video recording device. I have reviewed the recording of the September 20 Visit, and observed the following, among other things, to have taken place:

a. At the beginning of the September 20 Visit, ESSER asked CW-1, in substance and in part, whether s/he tried the Seconal and whether it was expensive. CW-1 replied, in substance and in part, that his/her friends with insurance filled the prescription, and ESSER said, "oh, good." CW-1 then said, in substance and in part, that the pills worked for his friends, that they gave CW-1 some pills to try, and that CW-1 liked them.

b. CW-1 asked ESSER to write a prescription in the name of another person ("ALIAS-2"). CW-1 explained to ESSER that ALIAS-2 had insurance and liked the Seconal. ESSER said he would do that, and asked if he should write the prescription for

⁵ I know Seconal to be a brand name for secobarbital, a Schedule II controlled substance that is indicated for, among other things, epilepsy and the temporary treatment of insomnia.

"thirty." CW-1 said he should write it for "ninety." CW-1 said s/he would pay ESSER for the prescription written in ALIAS-2's name.

c. ESSER asked for ALIAS-2's address,⁶ wrote out the prescription, and subsequently handed to CW-1 a prescription for Seconal in the name of ALIAS-2.

d. ESSER also provided CW-1 with a twenty-day supply of Saphris samples.⁷

e. CW-1 was charged \$75 for the visit.

11. Immediately after the September 20 Visit, CW-1 showed law enforcement agents prescriptions written by ARISTIDE ESSER, the defendant, for:

a. "Wellbutrin XL 300mg #30" in CW-1's name;

b. "Xanax 2mg #180" in CW-1's name; and

c. "Seconal 100mg #90" in ALIAS-2's name.

12. On or about October 14, 2011, CW-1 visited ARISTIDE ESSER, the defendant, for an appointment (the "October 14 Visit"). CW-1 was equipped with an audio/video recording device. I have reviewed the recording of the October 14 Visit, and observed the following, among other things, to have taken place:

a. ESSER began by asking, in substance and in part, what CW-1 was "looking for."

b. CW-1 requested that ESSER provide CW-1 with a prescription for Dexedrine. CW-1 further requested that ESSER write a specific designation on the top of the prescription that would enable CW-1 to obtain a 90-day supply of Dexedrine. Later during the October 14 Visit, CW-1 placed a call to a pharmacist

⁶ A law enforcement agent advised me the "address" provided by CW-1 for ALIAS-2 was a fictitious address that does not correspond to an existing location.

⁷ I know Saphris to be a brand name for asenapine, which is not a controlled substance. According to information published by the manufacturer, Saphris is an antipsychotic medication indicated for schizophrenia and bipolar disorder.

to confirm the manner in which ESSER should write the prescription to ensure that CW-1 could receive a 90-day supply. CW-1 then relayed the information to ESSER. ESSER thereafter wrote the prescription and included the notations, "Code E" and "narcolepsy" on the prescription, as CW-1 had directed him to do.

c. ESSER asked CW-1 about the "friend" for whom ESSER has prescribed Seconal.

d. ESSER told CW-1, in substance and in part, that he could not provide CW-1 with a prescription for Opana because he was barred by New York State from proscribing opiates, but said that he could prescribe other types of pain medications.

e. ESSER also provided CW-1 with prescriptions for Wellbutrin and Xanax.

f. CW-1 asked ESSER if he would provide prescriptions for CW-1's friends. ESSER said, in substance and in part, that he would not do so, and that he had done it "now and then" just to help CW-1 out. When CW-1 made reference to ALIAS-2, ESSER stated, in substance and in part, that that was a Seconal prescription, that he only did that "one time," and that he had to be careful because regulators are "tough." ESSER further told CW-1, in substance and in part, that CW-1 should send the friends to him and he would "gladly medicate" them.

g. CW-1 then asked ESSER for a Seconal prescription in CW-1's name, which ESSER provided.

h. CW-1 told ESSER that s/he would bring other people to see ESSER. ESSER stated that his fee for an initial visit is \$300.

13. Immediately after the October 14 Visit, CW-1 showed law enforcement agents prescriptions written by ARISTIDE ESSER, the defendant, for:

- a. "Wellbutrin XL 300mg #30" in CW-1's name;
- b. "Xanax 2mg #180" in CW-1's name;
- c. "Seconal 100mg #90" in CW-1's name; and
- d. Dexedrine in CW-1's name.

14. I have reviewed records from the New York State Department of Health, State Board for Professional Medical

Conduct, concerning professional misconduct charges brought in 2001 against ARISTIDE ESSER, the defendant, by the New York State Department of Health, Bureau of Professional Medical Misconduct, and in particular, a December 21, 2001 Modification Order and an October 30, 2001 Determination and Order. Based on my review of these records, I have learned that from on or about May 1, 2001, through on or about June 29, 2001, a committee of the New York State Board for Professional Medical Conduct (the "BPMC Hearing Committee") conducted a nine-day hearing concerning the charges brought against ESSER. Based on its factual findings, the BPMC Hearing Committee, among other things, suspended ESSER's license to practice medicine New York for four years (which was stayed for the entire period while ESSER was placed on probation) and permanently prohibited ESSER from prescribing opiates.

WHEREFORE, the deponent prays that a warrant be issued for the arrest of ARISTIDE ESSER, the defendant, and that he be imprisoned, or bailed, as the case may be.

BRIAN O'ROURKE
Special Agent
Federal Bureau of Investigation

Sworn to before me this
17th day of November 2011.



THE HONORABLE GEORGE A. YANTHIS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK